

**NOVEMBER 2003 AGENDA**

<b>SUBJECT</b>	<b>X</b>	<b>ACTION</b>
		<b>INFORMATION</b>
		<b>PUBLIC HEARING</b>
Assembly Bill 1994 Programmatic Implementation: Approve Commencement of the Rulemaking Process for Amendments to Title 5		

**Recommendation:**

California Department of Education staff recommend that the State Board of Education: (1) approve the proposed regulations pertaining to implementation of the programmatic provisions of Assembly Bill (AB) 1994, the Initial Statement of Reasons, and the Notice of Proposed Rulemaking, with technical modifications as may be identified and incorporated by staff, subject to the approval of the Executive Director of the State Board; (2) direct staff to proceed with the 45-day public comment period in accordance with the Administrative Procedure Act; and (3) direct staff to conduct a public hearing on the proposed regulations pursuant to California Code of Regulations, Title 5, Section 18460.

**Summary of Previous State Board of Education Discussion and Action:**

The SBE adopted permanent regulations implementing to the financial reporting requirements established by AB 1994. Those regulations are currently with the Office of Administrative Law (OAL) awaiting final approval.

The SBE received an information memorandum in August 2003 with an earlier draft of these AB 1994 programmatic regulations, and received this final version in an October 2003 information memorandum.

**Summary of Key Issue(s):**

Assembly Bill 1994 (Chapter 1058, Statutes of 2002) contained a number of significant programmatic provisions affecting charter schools, and the bill requires the State Board to adopt regulations to implement certain aspects of the statutory changes. The Advisory Commission on Charter Schools (ACCS) discussed various versions of AB 1994 programmatic implementation regulations on several occasions, both in concept and with regard to certain specific elements. During August 2003, State Board members received an information memorandum with a version of the permanent regulations that the ACCS had tentatively endorsed in July. However, at its September 2003 meeting, the ACCS considered the regulations further, and proposed several significant changes. The attached text, which was also provided as an information memorandum in October 2003, reflects the ACCS-recommended changes.

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**Summary of Key Issue(s):**

A proposed regulation regarding funding for countywide charter schools has been separated from these proposed regulations in an effort to get the funding regulation adopted by the First Principal Apportionment in February 2004. There is concern that some of the provisions of these AB 1994 programmatic regulations may generate controversy and take longer to get through the adoption process. The countywide charter school funding regulation is also before the SBE this month to commence the rulemaking process.

The proposed regulatory package is currently undergoing fiscal review by CDE staff. There may be technical or nonsubstantive changes recommended as a result of that review, which would need to be incorporated into the regulations prior to the initial rulemaking package being submitted to OAL.

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**Fiscal Analysis (as appropriate)**

The statutory changes enacted by AB 1994 will result in increased costs associated with the increased workload to the CDE and SBE to review, approve, and oversee a greater number of charter schools. There is no anticipated additional costs associated with these proposed regulations, although CDE staff have not completed the financial impact statement. That statement will be provided in a last minute memorandum.

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**Attachment(s)**

- Attachment 1: [Notice of Proposed Rulemaking \(Pages 1-6\)](#)
- Attachment 2: [Initial Statement of Reasons \(Pages 1-7\)](#)
- Attachment 3: [Proposed Regulations \(Pages 1-13\)](#)

STATE OF CALIFORNIA  
Governor

GRAY DAVIS,

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**CALIFORNIA STATE BOARD OF EDUCATION**

1430 N Street; P.O. Box 944272  
Sacramento, CA 94244-2720



**TITLE 5. EDUCATION**

**CALIFORNIA STATE BOARD OF EDUCATION**

**NOTICE OF PROPOSED RULEMAKING**

**State Board Review of Multi-site Charters of Statewide Interest**

*[Notice published \_\_\_\_\_, 2003]*

The State Board of Education (State Board) proposes to adopt the regulations described below after considering all comments, objections, or recommendations regarding the proposed action.

**PUBLIC HEARING**

The State Board will hold a public hearing beginning at \_\_\_\_\_ on \_\_\_\_\_, \_\_\_\_\_, at 1430 N Street, Room 1101, Sacramento. The room is wheelchair accessible. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. The State Board requests that any person desiring to present statements or arguments orally notify the Regulations Adoption Coordinator of such intent. No oral statements will be accepted subsequent to this public hearing.

**WRITTEN COMMENT PERIOD**

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Regulations Adoption Coordinator. All written comments must be received by the Regulations Adoption Coordinator no later than the close of the public hearing scheduled to start at \_\_\_\_\_ on \_\_\_\_\_, \_\_\_\_\_. Requests to present oral statements at the public hearing or written comments for the State Board's consideration should be directed to:

Debra Strain, Regulations Adoption Coordinator  
California Department of Education  
LEGAL DIVISION  
1430 N Street, Room 5319  
Sacramento, California 94244-2720

Telephone : (916) 319-0641  
FAX: (916) 319-0155  
E-mail: [dstrain@cde.ca.gov](mailto:dstrain@cde.ca.gov)

## **AUTHORITY AND REFERENCE**

Authority for these regulations is found in *Education Code* Section 33031. *Education Code* Section 33031 is the State Board's general authority to adopt rules and regulations for the government of the day and evening schools of the state that are not inconsistent with the requirement of statute.

Additional authority is provided in *Education Code* Section 47605.8(a) which requires the State Board to adopt regulations to implement Section 47605.8.

References are made to *Education Code* sections 47605, 47605.6, 47605.8, 47613, 47632, 47641, and 47651. These statutes govern the establishment, approval, oversight, and funding of charter schools.

## **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

The proposed regulations include five sections; three sections are amended and two new sections are added. These regulations are necessary to implement Assembly Bill (AB) 1994 (Chapter 1058, Statutes of 2002), which amended and added provisions to the Charter School Act of 1992.

The first section amends Title 5 of the California Code of Regulations (5 CCR) Section 11967 to conform to an amendment of *Education Code* Section 47605(j), to require a denied charter to appeal to the county board of education prior to appealing to the State Board. Previously, a charter that was denied by a school district could appeal to either the county board or the State Board. The amendments to 5CCR Section 11967 are largely technical and conforming to reflect the change in the sequence of a charter appeals.

The second section adds 5 CCR Section 11967.6, which is necessary pursuant to *Education Code* Section 47605.8(a). *Education Code* Section 47605.8 creates new responsibilities for the State Board to review and approve charter schools of statewide interest that propose to operate on multiple sites. The law requires the State Board to adopt regulations to implement Section 47605.8.

*Education Code* Section 47605.8 states:

(a) A petition for the operation of a state charter school may be submitted directly to the State Board of Education, and the board shall have the authority to approve a charter for the operation of a state charter school that may operate at multiple sites throughout the state. The State Board

of Education shall adopt regulations, pursuant to the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code) for the implementation of this section. Any regulations adopted pursuant to this section shall ensure that a charter school approved pursuant to this section meets all requirements otherwise imposed on charter schools pursuant to this part, except that a charter school approved pursuant to this section shall not be subject to the geographic and site limitations otherwise imposed on charter schools.

(b) The State Board of Education may not approve a petition for the operation of a state charter school under this section unless the State Board of Education finds that the proposed state charter school will provide instructional services of statewide benefit that cannot be provided by a charter school operating in only one school district, or only in one county. The finding of the board in this regard shall be made part of the public record of the board's proceedings and shall precede the approval of the charter.

(c) The State Board of Education may, as a condition of charter petition approval, enter into an agreement with a third party, at the expense of the charter school, to oversee, monitor, and report on, the operations of the charter school. The State Board of Education may prescribe the aspects of the charter school's operations to be monitored by the third party and may prescribe appropriate requirements regarding the reporting of information concerning the operations of the charter school to the State Board of Education.

(d) The State Board of Education shall not be required to approve a petition for the operation of a statewide charter school, and may deny approval based on any of the reasons set forth in subdivision (b) of Section 47605.6.

The State Board previously adopted regulations describing the criteria and process for State Board review and approval of charters that have been denied by local entities. They are included in 5 CCR sections 11967 through 11967.5.1. These existing regulations are used as a reference and basis for the proposed regulations implementing *Education Code* Section 47605.8. However, *Education Code* Section 47605.8 creates a new type of State Board-approved charter school that requires additional considerations that are not addressed in existing regulations.

The third section adds 5 CCR Section 11967.7 to provide technical clarity regarding the funding calculation and process for providing operational funding to statewide charter schools and to specify that for purposes of local tax transfers, a statewide charter does not have a “sponsoring local education agency.”

The fourth section amends 5 CCR Section 11968 related to the number of charter schools authorized to operate in the state. These amendments are necessary to align the charter numbering process more closely with the language in *Education Code* Section 47602 as amended by AB 1994, and the amendments to Section 11969 that are proposed to 5 CCR Section 11969 described below.

The last section amends 5 CCR Section 11969 regarding the numbering of charter petitions by

the State Board. This amendment is necessary to implement an amendment to *Education Code* Section 47602, which was also enacted through AB 1994. This section now requires the State Board, in its charter-numbering process, to consider providing separate charter numbers to each site of a multi-site charter that offers differing educational programs.

### **DISCLOSURES REGARDING THE PROPOSED ACTION**

Mandate on local agencies and school districts: None

Cost or savings to any state agency: None

Costs to any local agency or school district which must be reimbursed in accordance with Government Code Section 17561: None

Other non-discretionary cost or savings imposed on local educational agencies: None

Cost or savings in federal funding to the state: None

Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None.

Cost impacts on a representative private person or businesses: The State Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Adoption of these regulations will not:

- (1) create or eliminate jobs within California;
- (2) create new businesses or eliminate existing businesses within California; or
- (3) affect the expansion of businesses currently doing business within California.

Significant effect on housing costs: None.

Affect on small businesses: The proposed amendments to the regulations do not have an affect on small businesses because they provide a process for a new type of charter school to obtain approval from the State Board and therefore, have no effect on existing charter schools or small businesses. The proposed regulations do not impose additional workload on small businesses or contractors funded by the Department.

### **CONSIDERATION OF ALTERNATIVES**

In accordance with Government Code Section 11346.5(a)(13), the State Board must determine

that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the State Board, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The State Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

### **CONTACT PERSONS**

Inquiries concerning the substance of the proposed regulations should be directed to:

Eileen Cubanski, Administrator  
California Department of Education  
Charter School Division  
1430 N Street, Room 5401  
Sacramento, CA 95814  
E-mail: [ecubansk@cde.ca.gov](mailto:ecubansk@cde.ca.gov)  
Telephone: (916) 322-6029  
FAX: (916) 322-1465

Requests for a copy of the proposed text of the regulations, the Initial Statement of Reasons, the modified text of the regulations, if any, or other technical information upon which the rulemaking is based or questions on the proposed administrative action may be directed to the Regulations Adoption Coordinator.

### **AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS**

The Regulations Adoption Coordinator will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at her office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, and the Initial Statement of Reasons. A copy may be obtained by contacting the Regulations Adoption Coordinator at the above address.

### **AVAILABILITY OF CHANGED OR MODIFIED TEXT**

Following the public hearing and considering all timely and relevant comments received, the State Board may adopt the proposed regulations substantially as described in this notice. If the State Board makes modifications which are sufficiently related to the originally proposed text, the modified text (with changes clearly indicated) will be available to the public for at least 15

days before the State Board adopts the regulations as revised. Requests for copies of any modified regulations should be sent to the attention of the Regulations Adoption Coordinator at the address indicated above. The State Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

#### **AVAILABILITY OF THE FINAL STATEMENT OF REASONS**

Upon its completion, a copy of the Final Statement of Reasons may be obtained by contacting the Regulations Adoption Coordinator at the above address.

#### **AVAILABILITY OF DOCUMENTS ON THE INTERNET**

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, the text of the regulations in underline and strikeout, and the Final Statement of Reasons, can be accessed through the California Department of Education's Web site at [<http://www.cde.ca.gov/regulations>.](http://www.cde.ca.gov/regulations)



## **INITIAL STATEMENT OF REASONS**

**Section 11967. Appeals on Charter Petitions That Have Been Denied (Amendment)**  
**and**  
**Section 11967.6. Statewide Charter Schools**  
**and**  
**Section 11967.7. Funding for Statewide Charter Schools**  
**and**  
**Section 11968. Maximum Number of Charter Schools (Amendment)**  
**and**  
**Section 11969. Numbering of Charter School Petitions (Amendment)**

## **SPECIFIC PURPOSE OF THE REGULATIONS**

The proposed regulations will clarify existing law with regard to the State Board of Education's process for reviewing charter petitions that have been denied by a county office of education after denial by a local school district, establish a process and criteria for State Board review and approval of charter schools of statewide interest that will operate on multiple sites, clarify the funding process to be used for statewide and countywide charter schools, and clarify the State Board's process for numbering charter schools that will operate on multiple sites.

## **NECESSITY/RATIONALE**

Assembly Bill (AB) 1994 (Chapter 1058, Statutes of 2002) amended the Charter School Act of 1992, and added *Education Code* Section 47605.8 that creates new responsibilities for the State Board to review and approve charter schools of statewide interest that propose to operate on multiple sites. *Education Code* Section 47605.8(a) requires the SBE to adopt regulations to implement this section. AB 1994 also amended *Education Code* Section 47602 related to State Board numbering of charter petitions, and *Education Code* Section 47605(j) related to appeals of charter petitions that have been denied. These amendments of law require conforming and technical amendments to existing regulations.

### **SECTION 11967**

These amendments are necessary because, pursuant to AB 1994, *Education Code* Section 47065(j), now requires a charter petition that has been denied by a district to submit an appeal to the county board of education. Only if the county board denies the petition may the petitioners submit the appeal to the State Board. Prior to AB 1994, a petitioner for a charter denied by a district could submit an appeal directly to either the county board of education or the State Board of Education.

**Subsection (a).** The proposed amendment to subsection (a) deletes "or the State Board of Education" from the description of the first step in the appeal process. This is a conforming

change to remove the option for a charter school that has been denied by a school district to submit an appeal directly to the State Board of Education. This is required because an amendment to *Education Code* Section 47065(j) now requires a charter petition to first submit an appeal to the county board of education. Only if the county board denies the petition may the petitioners submit the appeal to the State Board.

**Subsection (b).** Item (2) was deleted to recognize that the charter school appellant has no control over the action of the denying entity and therefore, should not be required to submit documents originating from the denying entity.

**Subsection (c).** This section has been revised to reflect the new sequential process of appeal from the county to the state.

**Subsection (d).** Amendment provides technical clarity.

**Subsection (e).** Amendment provides technical clarity and acknowledges the role of the newly established Advisory Commission on Charter Schools (ACCS) in the appeal process.

**Subsection (f).** The proposed amendment to subsection (f) makes a minor and technical amendment to remove language duplicated in subsection (c).

### **SECTION 11967.6**

*Education Code* Section 47605.8 creates new responsibilities for the State Board to review and approve charter schools of statewide interest that propose to operate on multiple sites. *Education Code* Section 47605.8(a) requires the SBE to adopt regulations to implement Section 47605.8.

Further, *Education Code* Section 47605.8(d) states, “The State Board of Education shall not be required to approve a petition for the operation of a statewide charter school, and may deny approval based on any of the reasons set forth in subdivision (b) of Section 47605.6.” Section 47605.6(b)(6) states that the board may deny a petition on any “basis the board finds justifies the denial of the petition.” The section appears to give the State Board broad authority and discretion to establish the criteria and standards for charter approval. Therefore, these regulations are necessary to establish State board policy and provide clear guidance to charter petitioners.

**Subsection (a).** The State Board previously adopted regulations describing the criteria and process for State Board review and approval of charters that have been denied by local entities, which are included in sections 11967 through 11967.5.1. This subsection applies these existing regulations as a basis for implementing *Education Code* Section 47605.8. However, *Education Code* Section 47605.8 creates a new type of State Board-approved charter school that requires additional considerations that are not addressed in existing regulations.

**Subsection (b).** This subsection provides parameters for consideration of a statewide charter. For purposes of this section, a charter must provide for the instruction of pupils “at sites in more than one district or in more than one county” and must initially commence instruction at more than one site. This restriction is consistent with *Education Code* Section 47605.8(a), which requires a statewide charter to “operate at multiple sites through out the state.” This subsection will ensure a scope of operation that is significantly different from a single site charter. This subsection also provides procedures and timelines for the commencement of operation of each school site to be operated by an approved statewide charter school. Paragraph 5 specifically applies *Education Code* Section 47652(b) to statewide charter schools, which requires a charter to commence operation no later than September 30 of the first fiscal year of operation.

**Subsection (c).** This subsection parallels the requirements in Section 11967 that established specific application requirements for charter petitions to the State Board. However, multi-site charter schools present a greater level of complexity than single-site charter schools. Therefore, this subsection establishes requirements that are similar to those for single-site charter schools, but modify them to address each requirement for each site that will be operated by the school. Paragraphs 1 and 2 parallel specific requirements of law related to charter submittals.

Paragraphs 3 through 5 establish specific requirements for local input and communication about the proposed charter school. Multi-site charter schools submitted to the State Board could potentially bypass the traditional local consideration for a charter school. Local input for charter development and approval is a key element to the success of charter schools. Therefore, these paragraphs require petition signatures, local district notification, and public hearings for each site of the proposed charter. This will ensure an opportunity for local input and communication, even though the charter school will be authorized at the state level.

Paragraph 6 of this subsection defines what is required of a petitioner to convince the State Board that the multi-site charter school will be of “statewide benefit.” Statewide benefit is a requirement for State Board approval. “Statewide benefit” is defined in such a way that ensures that the State Board approval of a multi-site charter school would be of greater benefit to the state as a whole, than would be the loss of the local benefit of approving and overseeing a charter school.

Paragraph 7 requires the scope of the charter school audit to include consideration for each site. This requirement is intended to improve site level management and ensure each site of a multi-site charter school is compliant.

Paragraph 8 restates existing law (*Education Code* Section 47605.8) regarding oversight fees to ensure the petitioners understanding of this cost.

Paragraph 9 requires site-specific information for each site of the multi-site school. This is similar to the site and facility information that is required of all charter schools pursuant to

*Education Code* Section 47605(g).

Paragraph 10 clarifies that a multi-site charter school must operate essentially the same

educational program at each site. This is consistent with *Education Code* Section 47602 that requires a multi-site charter school that operates different educational programs to receive separate numbers by the State Board. Further, if a school were to operate significantly different educational programs at each site, it would not be able to meet the test of a single school of statewide benefit. It would be more appropriate for such an operation to seek individual charters from each local district in which it chooses to operate.

Paragraph 11 requires specific information about the school's special education program. The provision of special education services by a single school on multiple sites throughout the state could be very complicated and problematic. Further, the consequences of noncompliance with special education laws is potentially very serious. Therefore, requiring specific information on the school's special education program is justified.

Paragraph 12 requires information about the operation of the multi-site charter school. Because of the complexity of operating at several sites, this requirement is necessary to ensure that the schools have a viable operation and administrative plan.

**Subsection (d).** This subsection clarifies *Education Code* Section 47605.8(d) and applies a standard for denial action that conforms to Section 47605(b) and current State Board practice. This subsection is necessary to ensure that the State Board may apply discretionary authority beyond the specific requirement of these regulations as provided by the statute. This is necessary because of the broad variety of charter school models and modes of operation, and is clearly intended by *Education Code* sections 47605.8(d) and 47605.6(b)(6).

**Subsection (e).** This subsection provides timelines for State Board consideration of petitions and a process for review of charter petitions. Because of the complexity of reviewing and considering a multi-site charter, 150 days provides a reasonable review time. This will allow sufficient time for staff review of the petition, consideration of the petition by the ACCS and comment by the petitioners prior to State Board consideration. Timelines for posting agendas for both the ACCS and the State Board require this timeline to be longer than might otherwise be necessary. There is no statutory basis to require a shorter time line for approval.

**Subsection (f).** This section is necessary to explicitly clarify the provisions for renewal, revision, and revocation of charter schools approved under this section. While the applicability of *Education Code* Section 47407 is implicit in the law, explicit clarification here is warranted.

**Subsection (g).** This subsection specifies limitations on the provision of independent study in a statewide charter. Since the law does not provide any flexibility for statewide charters with

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regard to operating independent study, it is necessary to be explicit here so that independent

study providers fully understand the complexity and restrictions of operating independent study programs through a statewide charter.

### **SECTION 11967.7**

This section provides technical clarity regarding the funding calculation and process for providing operational funding to statewide charter schools.

**Subsection (a).** *Education Code* Section 47605.8 establishes new authority for the State Board to authorize and oversee charter schools of statewide interest. These charter schools are not associated with any local school district. However, the charter school funding model established in *Education Code* Section 47633 relies on a combination of state and local revenues to fully fund a charter school's block grant. The local revenue comes from the "sponsoring local education agency" (LEA) which is specifically defined in *Education Code* Section 47632(i). The sponsoring LEA is usually the school district that authorized the charter school, or in the case of a charter school approved on appeal, the district that initially denied the charter. The "sponsor" is responsible for the local property tax portion of the charter school block grant. However, in the case of a statewide charter approved pursuant to *Education Code* Section 47605.8, no sponsoring LEA is identified in statute. This subsection clarifies that for purposes of the local tax transfer, there is no "sponsoring LEA" and, therefore, the charter school block grant shall be funded entirely from state aid. Further, because there is no associated LEA in a statewide charter, this subsection also specifies that a statewide charter must be direct-funded for purposes of the charter school funding model.

The alternative to this method would be to require the "sponsor" to be "the pupil's school district of residence." This is the definition used for certain county authorized charter schools as specified in *Education Code* Section 47632(i)(4). However, the complexity in collecting and calculating this information for a charter school that may enroll students from any district in the state would be virtually impossible to administer. The resources required to attempt it would far outweigh the value of the local tax offset. Therefore, the method proposed here is the most reasonable given the lack of clear legislative direction on this issue.

**Subsection (b).** This subsection clarifies a process by which statewide charter school becomes associated with a county office of education for purposes of receiving funding. Because there is no LEA associated with a statewide charter school, a county office must be assigned to act as the LEA for purposes of establishing funding transfers for a statewide charter school.

### **SECTION 11968**

These amendments are necessary to align the charter numbering process more closely with the language in *Education Code* Section 47602 as amended by AB 1994, and the amendments to Section 11969 that are proposed below.

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### **SECTION 11969**

These amendments are necessary because, pursuant to AB 1994 amendments to *Education Code*

Section 47602, the State Board must now provide a separate charter number for each site of a charter school that does not share a common educational program. However, the new law is not explicit about the implications of providing separate numbers within a single charter. Therefore, an amendment to this section of regulation is necessary to clarify numbering of multi-site charter schools that do not share a common educational program. This subsection has also been revised to more closely align the numbering process with the intent of *Education Code* Section 47602 to track the number of charters authorized to operate in the state at any given time.

**Subsection (a).** The subsection also has been rewritten to more accurately parallel the amended language in *Education Code* Section 47602 regarding assigning multiple numbers to a single charter school. The reassignment of numbers from charter schools that have been closed is necessary to track the number of charters “authorized to operate.” If charter numbers are not reassigned when a charter is no longer authorized to operate, the numbering system would not accurately reflect the number of charters authorized at any given point in time, but would instead reflect the cumulative number of charters ever authorized. Reassigning numbers from closed charter schools ensures an accurate count.

**Subsection (b).** This is a new subsection necessary to implement the new numbering requirement of *Education Code* Section 47602(a). This subsection of regulation would only apply to multi-site charter schools that conform to all of the site restrictions enacted in AB 1994. Since there is no definition of “common educational program” in the law, this subsection establishes criteria for the State Board to determine the circumstances under which a multi-site charter school should receive multiple charter numbers for purposes of tracking the cap on the number of charter schools authorized to operate. This subsection also requires a charter petitioner that will operate on multiple sites to provide information for the State Board to establish whether the conditions for applying multiple charter numbers have been met.

**Subsection (c).** This subsection provides a process, similar to the numbering of multiple site charters in subsection (b), that applies in the situation in which an existing charter school adds a new school site. This subsection provides a process and criteria to establish whether the new site should receive a charter number in conformance with the AB 1994 amendments to *Education Code* Section 47602.

## **TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDIES, REPORTS, OR DOCUMENTS.**

The State Board did not rely upon any other technical, theoretical, or empirical studies, reports, or documents in proposing the adoption of these regulations.

**REASONABLE ALTERNATIVES TO THE REGULATIONS AND THE AGENCY'S  
REASONS FOR REJECTING THOSE ALTERNATIVES.**

The State Board was not presented with other viable alternatives to the adoption of these regulations.

**REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION  
THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS.**

The State Board has not identified any alternatives that would lessen any adverse impact on small business.

**EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC  
IMPACT ON ANY BUSINESS.**

The proposed regulations would not have a significant adverse economic impact on any business because they provide a process for a new type of charter school to obtain approval from the State Board and therefore, have no effect on existing charter schools or small businesses.

**Title 5. EDUCATION**  
**Division 1. State Department of Education**  
**Chapter 11. Special Programs**  
**Subchapter 19. Charter Schools**

*Amend Section 11967 to read:*

**Section 11967. Appeals on Charter Petitions That Have Been Denied.**

§11967. (a) A charter school petition that has been previously denied by the governing board of a school district must be received by the county board of education ~~or the State Board of Education~~ not later than 180 calendar days after the denial. A charter school petition that has been previously denied by a county board of education must be received by the State Board of Education not later than 180 calendar days after the denial. Any petition received by the county board of education or State Board of Education more than 180 days after denial shall not be acted upon by the county board of education or State Board of Education.

(b) When filing a petition with the county board of education or the State Board of Education for the establishment of a charter school, petitioner(s) shall provide the following:

(1) A complete copy of the charter petition as denied, including the signatures required by Education Code section 47605.

~~(2) A copy of the governing board's action of denial of the petition and the governing board's written factual findings specific to the particular petition, setting forth specific facts to support one or more of the grounds for denial set forth in Education Code section 47605(b) 1-5.~~

(2) ~~(3)~~ A signed certification of compliance with applicable law.

~~(3)~~ ~~(4)~~ A description of any changes to the petition necessary to reflect the county ~~office~~ board of education or the State Board of Education as the chartering entity.

~~—(c) The county board of education or State Board of Education shall deny a petition for the establishment of a charter school only if it makes written factual findings, specific to the~~



~~particular petition, setting forth specific facts to support one or more of the grounds for denial set forth in Education Code section 47605(b)(1)-(5).~~

(c) (1) Following the denial of a charter petition by a district governing board, and upon the submission of a charter petitioner as described in Education Code section 47605(j)(1), a county board of education shall review the petition pursuant to Education Code section 47605(b).

(2) Following the denial of a petition by a county board of education, and upon the filing of a charter petitioner as described in Education Code section 47605(j)(1), the State Board of Education shall review the petition in accordance with Education Code section 47605(b) and the criteria adopted pursuant to Education Code section 47605(j)(2).

(d) Not later than 60 days after receiving a complete petition package pursuant to Education Code section 47605(j)(1), and following review of the petition and a public hearing, ~~the~~ a county board of education shall grant or deny the charter petition. This date may be extended by an additional 30 days if the county board of education and the petitioner(s) agree to the extension.

(e) Not later than 90 days after receiving a complete petition package pursuant to Education Code section 47605(j)(1), and following review of the petition and a public hearing, the State Board of Education shall schedule, at its next regular board meeting, an action item to grant or deny the charter petition. This date may be extended by an additional 30 days if the State Board of Education and the petitioner(s) agree to the extension. If, in the process of reviewing the petition, the Advisory Commission on Charter Schools established in keeping with Education Code section 47634.2(b) holds a public hearing, the State Board of Education need not hold an additional public hearing before taking action. The State Board is obligated to hear public comment on each agenda item it considers in accordance with the Bagley-Keene Open Meeting Act.

(f) In considering charter petitions that have been previously denied, by a school district the county board of education or State Board of Education shall not limit its review to the reasons for denial stated by the school district, ~~but review the charter school petition pursuant to Education Code section 47605(b).~~

Note: Authority cited: Sections 33031 and 47605(j)(5), Education Code. Reference: Section 47605(j)(4), Education Code.

*Add Section 11967.6 to read:*

**Section 11967.6. Statewide Charter Schools.**

(a) This section governs petitions to establish statewide charter schools pursuant to Education Code section 47605.8. Any such petition shall:

(1) Provide that the proposed school will meet all requirements otherwise imposed on charter schools pursuant to Part 26.8 of the Education Code, except those requirements relating to geographic and site limitations.

(2) Be approved only after the State Board of Education makes a finding in the public record that the proposed school will provide instructional services of statewide benefit that cannot be provided by a charter school operating in only one school district or only one county.

(3) Be reviewed by the State Board in keeping with Education Code section 47605(b), the criteria adopted pursuant to Education Code section 47605(j)(2), and the provisions of this section.

(b) A petition shall include provisions for the instruction of pupils at sites in more than one school district or more than one county, subject to the following provisions:

(1) The school shall initially commence instruction of pupils in at least two of the planned sites, which shall be in at least two different school districts or two different counties.

(2) Any subsequent modification to the charter related to site information required in paragraph (9) of subdivision (c) shall require approval of the State Board of Education. The charter school may also add additional sites upon completion of the requirements in paragraphs (3), (4), (5), (9), (10), and (11) of subdivision (c) and approval of the State Board of Education.

(3) After a charter has been granted, but before the instruction of pupils commences at each site, the site shall be subject to an administrative determination by the California Department of

Education as to the completion of site-related requirements in subdivision (c) and compliance of the site with any conditions the State Board of Education may prescribe in its approval of the charter petition.

(4) The school shall notify the California Department of Education within 60 days of proposed commencement of instruction at each site identified in the charter, including submission of all documentation required in paragraph (3). Within 30 days of the receipt of a complete and documented request for an administrative determination pursuant to this paragraph, the California Department of Education shall evaluate the adequacy and appropriateness of the facilities for the proposed educational program and notify the charter petitioner(s) and any affected local education agency of its determination. The charter petitioner(s) or any affected local education agency may appeal the administrative determination within 10 days of the California Department of Education's notification. If an appeal is filed, the administrative determination is temporarily stayed, and the matter will be placed on the agenda of the next meeting of the State Board of Education (consistent with the requirements of the Bagley-Keene Open Meeting Act). The State Board of Education may approve, amend and approve, or reject the administrative determination of the California Department of Education. If no action is taken by the State Board of Education, the administrative determination of the California Department of Education shall stand.

(5) A school site in its first year of operation may only commence instruction between July 1 and September 30 of that year.

(c) A petition package shall, at a minimum, include all of the following components:

(1) A complete copy of the charter petition.

(2) The information specified in Education Code section 47605(g).

(3) Signatures either of parents or guardians or of teachers in keeping with Education Code section 47605(a)(1) for each site that is identified in the petition.

(4) For each site that is identified in the petition, evidence that the petitioner has notified the superintendent of each school district (on behalf of the district's governing board) and the superintendent of schools of each county (on behalf of the county board of education) in which

the charter school identifies a site will be located. The notifications shall express the intent of the petitioner to submit the petition to the State Board of Education and include both a copy of the petition as then developed and the petitioner's plan for solicitation of local community input as provided for in paragraph (5).

(5) A description of how the petitioner(s) or representatives of the petitioner(s) have solicited local community input for each site where the charter identifies the school will operate. Satisfaction of this paragraph shall involve the holding of at least one publicly noticed meeting for each site, with a summary of the input received at the meeting(s) being included in the petition package.

(6) A description of how the charter school will provide instructional services of statewide benefit that cannot be provided by a charter school operating in only one school district, or only in one county. Neither a description of administrative or operational benefit to a charter operator, nor an expression of desire by a charter operator to provide services in more than one district and county, shall be considered sufficient to constitute a statewide benefit in and of itself. The description may include, but is not limited to:

(A) The particular factors and circumstances related to the school's educational program that make the school best able to meet its educational mission as a statewide charter school, rather than as a district- or county-authorized charter school.

(B) How the charter school's approval as a statewide charter school, rather than a district- or county-authorized charter school, will be of benefit to:

(i) the pupils who will attend the school;

(ii) the communities (including the school districts and the counties) in which the school sites will be located (e.g., in terms of pupil demographics and performance);

(iii) the state; and

(iv) to the extent applicable, the school itself (e.g., in fund raising, community partnerships, or relationships with institutions of higher education).

(C) Other information to help the State Board determine that the petition is particularly well positioned to be a statewide charter, rather than a locally approved charter and that approval will

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4 result in a statewide charter school that is both fully compliant with the requirements of law and  
5 likely to be a successful school.

6 (7) An acknowledgement that an annual independent audit of the school must be conducted  
7 in keeping with applicable statute and regulation and an indication of how the school's  
8 individual sites will be appropriately included in the audit process.

9 (8) An acknowledgement that the school must pay charges for oversight costs in keeping  
10 with statute, and that the State Board may delegate oversight and monitoring of the school's  
11 operation to a third party.

12 (9) A list of each site that will be operated by the school that includes:

13 (A) A timeline for the commencement of instruction at each site;

14 (B) The general location of each site and the school district and county in which each site is  
15 to be located;

16 (C) A description of the potential facilities to be used at each site; and

17 (D) The approximate number of pupils that can safely be accommodated at each site.

18 (10) Consistent with the proposed charter, an assurance that the educational program  
19 described in the charter will be essentially similar at each site and, thus, that each pupil's  
20 educational experience will be reasonably the same with regard to instructional methods,  
21 instructional materials, staffing configuration, personnel requirements, course offerings and class  
22 schedules.

23 (11) A description of how the school and each of its sites will participate in a special  
24 education local plan area (SELPA) pursuant to Education Code section 47641, recognizing the  
25 critical role of a SELPA in:

26 (A) Distributing special education funding;

27 (B) Ensuring that pupils are being appropriately identified and referred for special  
28 education; and

29 (C) Once individualized education programs have been established, ensuring that pupils are  
30 receiving necessary programs and services.

31 (12) A plan for operations of the school that describes the distinction between centralized and  
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site level responsibilities and includes a staffing plan to implement the activities at the designated level. The plan shall address all topics of school operations including, but not limited to: facilities and site operations, legal and programmatic compliance, financial administration, governance, and decision-making authority.

(d) The State Board of Education is not required to approve any petition pursuant to Education Code section 47605.8. The State Board may deny a petition for any of the reasons set forth in Education Code section 47605.6(b).

(e) (1) Unless otherwise agreed to by the petitioner(s), not later than 150 days after receiving a complete petition package and following review of a petition and a public hearing, the State Board of Education shall consider an action item to grant or deny the petition.

(2) Prior to consideration by the State Board of Education, the petition shall be considered by the Advisory Commission on Charter Schools established pursuant to Education Code section 47634.2(b). If the Advisory Commission holds a public hearing in conjunction with its consideration of the petition, then the State Board need not hold an additional public hearing before taking action. The State Board is obligated to hear public comment on each agenda item it considers in accordance with the Bagley-Keene Open Meeting Act.

(3) The California Department of Education shall review the petition and provide an analysis, along with any recommendation(s), to the members of the Advisory Commission and to the petitioner(s) at least 10 days prior to the petition's consideration by the Advisory Commission on Charter Schools. The California Department of Education's analysis and recommendations are subject to clarification or revision prior to (or at) the meeting of the Advisory Commission as may be necessary in the judgment of the California Department of Education.

(4) Following its submission, a petition or any other element of a petition package may be modified only with the approval of the State Board of Education.

(5) A recommendation to grant or to deny a petition by the Advisory Commission on Charter Schools and/or by the California Department of Education may include a recommendation to allow modifications and may specify any recommended conditions of approval.

(6) Any findings and any recommendation by the Advisory Commission on Charter Schools shall be reported to the State Board of Education by the California Department of Education.

(f) A petition shall be subject to the provisions of Education Code section 47607 regarding charter term, renewal, material revision, and revocation.

(g) A petition approved pursuant to this section may provide for independent study if all of the following conditions are met:

(1) Any instruction provided through independent study complies with all requirements of law.

(2) If the school provides nonclassroom-based instruction that exceeds the percentage specified in Education Code section 47612.5, it shall be funded only in keeping with a determination of funding separately approved pursuant to Education Code section 47634.2. Approval of a determination of funding for a statewide charter school may not be incorporated in a petition.

(3) The provision for independent study in the charter is express. A charter that does not expressly provide for independent study may not be interpreted as allowing independent study.

Note: Authority cited: Section 33031 and 47605.8, Education Code. Reference 47605, 47605.6, 47613, and 47641, Education Code.

*Add Section 11967.7 to read:*

**Section 11967.7. Funding for Statewide Charter Schools.**

(a) For the purpose of funding charter schools approved pursuant to Education Code Section 47605.8 and Section 11967.6, the following shall apply.

(1) The charter school shall be funded pursuant to Chapter 6 of Part 26.8 of the Education Code (commencing with Section 47630) and shall receive its funding directly.

(2) There is no “sponsoring local education agency” as defined in Education Code Section 47632.

(3) In the computation of the charter school’s general-purpose entitlement pursuant to Education Code section 47633, there is no local revenue, and the total amount of the charter

school's general-purpose entitlement shall be fully funded from state aid.

(4) The warrant for the charter school shall be drawn in favor of the superintendent of schools of the county office of education assigned in subdivision (b) of this section.

(b) (1) For charter schools approved pursuant to Education Code Section 47605.8 and Section 11967.6, the State Board of Education may assign any county office of education (with the consent of the county office) the responsibility for establishing the appropriate funds or accounts in the county treasury and for making the necessary arrangements for participation in the State Teachers' Retirement System and/or the Public Employees Retirement System as requested by the charter school. The county office may charge the charter school for the actual cost of services in accordance with Education Code Section 47611.3.

(2) Preference shall be given in any assignment made pursuant to paragraph (1) of this subdivision to the county office of education in the county that the charter school identifies as the principal location of its business records.

(3) If no county office of education is willing to accept the responsibilities described in paragraph (1), then the county office of education in the county that the charter school identifies as the principal location of its business records may be assigned by the State Board of Education.

(4) The State Board of Education may send part of any oversight fee it may collect for a statewide charter school to the county office of education assigned pursuant to this subdivision.

Note: Authority cited: Section 33031 and 47605.8, Education Code. Reference Section 47632 and 47651, Education Code.

*Amend Section 11968 to read:*

**Section 11968. Maximum Number of Charters.**

§11968. (a) If a charter school ceases to operate ~~through~~ for any reason, including, but not limited to, voluntary surrender, revocation, or non-renewal of its charter, the charter school's number or numbers will lapse and will not be reassigned in the numbering system maintained by the California Department of Education pursuant to Section 11969. The purpose of reassignment of numbers shall be to ensure, to the extent practicable, that the highest charter number assigned



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2 at any given time corresponds to the total number of charters that may provide instruction to  
3 pupils in this state. The reassignment of charter numbers shall be accomplished so as to avoid  
4 any confusion that might otherwise arise from a current charter school being assigned a number  
5 that formerly was assigned to a different charter school.

6 (b) On July 1, 1999, and on each succeeding July 1, the ~~limit on the total number of allowable~~  
7 ~~charter petitions~~ maximum number of charter schools authorized to operate in this state will be  
8 increased by 100.

9 (c) Whenever the ~~statutory limit on the permissible~~ maximum number of charter school  
10 ~~petitions~~ schools authorized to operate in this state is reached, ~~requests for new numbers will be~~  
11 ~~placed on a list in the order received by the State Board of Education as determined by the~~  
12 numbering system maintained pursuant to Section 11969, then no charter school assigned a  
13 charter number thereafter is authorized to operate until one of the following occurs:

14 (A) The maximum number is increased sufficiently to accommodate the school; or

15 (B) The ceasing to operate of an existing charter school or schools for any reason  
16 (including, but not limited to, voluntary surrender, revocation, or non-renewal) creates sufficient  
17 capacity within the maximum number to accommodate the school.

18 Note: Authority cited: Sections 33031 and 47602(b), Education Code. Reference: Section  
19 47602, Education Code.

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21 *Amend Section 11969 to read:*

22 **Section 11969. Numbering of Charter School Petitions.** §11969.—~~Each charter petition~~  
23 ~~granted pursuant to subdivision (j) of Section 47605 of the Education Code and each charter~~  
24 ~~notice received by the State Board of Education pursuant to subdivision (i) and paragraph (5) of~~  
25 ~~subdivision (j) of Section 47605 shall be given one number. For purposes of calculating the~~  
26 ~~maximum total number of charter schools authorized to operate in this state, each petition shall~~  
27 ~~be deemed to authorize one charter school.~~

(a) (1) In accordance with subdivision (a) of Section 47602 of the Education Code, the California Department of Education, on behalf of the State Board of Education, shall establish and administer a numbering system to track the total number of charter schools authorized to operate in the state, based on the chronological order of the receipt of notification of charter approval or, in the case of a charter petition approved by the State Board of Education, the time of the State Board's approval. The purpose of the numbering system shall be to ensure that the maximum number of charter schools that may provide instruction to pupils in this state is not exceeded at any time.

(2) Whenever the maximum number of charter schools authorized to operate in the state is reached as determined by the numbering system, the provisions of subdivision (c) of Section 11968 shall apply.

(3) To determine whether any additional site that a chartering entity allows a charter school to open is within the maximum number of charter schools authorized to operate in the state, the provisions of subdivision (c) shall be applied.

(b) (1) When the State Board of Education approves a charter petition or receives notice that a charter petition has been approved by a local education agency, the State Board shall assign the school described in the petition one charter number, unless both of the following conditions are met:

(A) The school will operate at multiple sites; and

(B) Among the multiple sites, one or more of the sites shall offer different educational programs or serve different pupil populations than the other site(s). For purposes of this subparagraph, "different pupil populations" may include, but not limited to, pupils in different grade levels and pupils who have different educational characteristics or needs.

(2) If an approved charter petition meets the conditions set forth in subparagraphs (A) and (B) of paragraph (1) in the judgment of the State Board of Education, then the State Board shall assign the school (to be established under the approved petition) multiple charter numbers, as the State Board determines appropriate, but no more than one charter number per site.

(3) As necessary, the petitioner or petitioners for a charter school that has been approved by a local education agency shall provide the California Department of Education information regarding the applicability to the school of the conditions specified in subparagraphs (A) and (B) of paragraph (1) for purposes of assisting the State Board of Education in determining the appropriateness of assigning the school a single charter number or multiple charter numbers.

(4) The State Board of Education shall also assign multiple charter numbers to a charter school when the provisions of subdivision (c) apply.

(c) (1) When the chartering entity of an existing, numbered charter school allows the school to open one or more additional sites, the charter school shall notify the California Department of Education within 30 days (of the chartering entity's action being taken) in order for a determination to be made as to whether one or more additional charter numbers must be assigned to the school.

(2) As necessary, the charter school shall provide the California Department of Education information to assist the State Board of Education in determining whether the additional site(s) meet the conditions described in subparagraphs (A) and (B) of paragraph (1) of subdivision (b) and, thus, whether the school must be assigned one or more additional charter numbers.

(3) If the State Board of Education determines that the additional site(s) meet the conditions specified in subparagraphs (A) and (B) of paragraph (1) of subdivision (b), then the State Board shall assign one or more additional charter numbers to the school in keeping with paragraph (4) of subdivision (b), but no more than one charter number per site.

(4) This subdivision shall not apply if a charter school moves from one site to another, provided the total number of sites operated by the school does not increase.

(5) This subdivision shall not apply if a charter school is requested or required by the school's chartering entity to break up a single site into multiple sites, e.g., to better utilize available facilities. In such a case, the affected school will retain a single charter number for the multiple sites so created.

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Note: Authority cited: Section 33031, Education Code. Reference: Section 47602, Education  
Code.

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